

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application of New York Telephone)
Company (d/b/a Bell Atlantic-)
New York), Bell Atlantic)
Communications, Inc., NYNEX Long)
Distance Company, and Bell Atlantic)
Global Networks, Inc., for)
Authorization To Provide In-Region)
InterLATA Services in New York)

CC Docket No. 99-295

REPLY COMMENTS OF DSL.net, INC.

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November 8, 1999

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INTRODUCTION AND SUMMARY OF ARGUMENT

In its initial comments filed on October 19, 1999, DSL.net, Inc. (“DSL.net”), identified several deficiencies in Bell Atlantic’s application. DSL.net’s review of the initial comments of other DSL providers, including Covad and NorthPoint, provides confirmation that DSL.net is not the only new entrant to encounter difficulties in obtaining xDSL-capable unbundled loops from Bell Atlantic. Because the issues not yet resolved are ones likely to have a substantial effect on future competition in the market for provision of local broadband telecommunications in New York and elsewhere, the Bell Atlantic application is not yet grantable.

**THE COMMISSION SHOULD NOT GRANT BELL ATLANTIC’S
APPLICATION UNTIL REMAINING ISSUES RELATED TO PROVISION OF
XDSL-CAPABLE LOOPS HAVE BEEN RESOLVED**

In large part due to a nearly three-year effort by the New York Public Service Commission (“NY PSC”) in its Docket No. 97-C-0271, Bell Atlantic appears to be within sight of the Section 271 finish line. However, the NY PSC’s conclusion that Bell Atlantic “is providing” unbundled local loops and has met its obligations under checklist item (iv) (Evaluation at 99) is not supported by the record.¹ The NY PSC’s findings (at

¹ Indeed, the NY PSC acknowledged that “[w]ith respect to xDSL-capable loops, issues remaining include loop qualification, prices and conditioning charges, and provisioning timeliness and quality.” NY PSC Comments at 80. With issues outstanding as to virtually all of the factors of importance to competitors – availability, pricing, timely provisioning and quality – Bell Atlantic’s claim that it has irreversibly opened its market to competition rings peculiarly hollow. The fact Bell Atlantic is legally obligated to provide unbundled loops on a non-discriminatory basis is clearly not an adequate substitute for the actual provision of such loops.

96-97), that Bell Atlantic “has binding legal obligations to provide unbundled local loops contained in interconnection agreements...and legally enforceable obligations to provide unbundled loops on a nondiscriminatory basis pursuant to its tariff” do not demonstrate that Bell Atlantic “is providing” unbundled loops.

The NY PSC’s conclusion that Bell Atlantic has satisfied item (iv) of the checklist is not shared by the New York Attorney General (“NY AG”), which stated, with respect to the provision of unbundled local loops, that the problems still outstanding are serious and not trivial, and that is not clear that Bell Atlantic will be able to fix them before the Commission’s deadline for acting on the application. (NY AG Comments, at 40).

Similarly, the U. S. Department of Justice (“DOJ”) has concluded that:

Bell Atlantic has not yet demonstrated that it can adequately provide access to unbundled local loops, either for traditional voice services or for digital subscriber line (“DSL”) technology used to provide a variety of advanced services...There remains significant doubt that Bell Atlantic has provided the stable and efficient electronic systems that will be needed to support a competitive market. These remaining problems are few in number, but they will impose a significant restraint on competition if they are not adequately resolved.

Department of Justice Evaluation at 2.

DSL.net believes that the best way to ensure that these important competitive issues are quickly and effectively resolved is for the Commission to withhold long distance authority from Bell Atlantic until full compliance is demonstrated. DSL.net disagrees with the NY PSC’s view that such issues can be resolved after the application is granted, because the Performance Incentive Plan’s “financial incentives, along with its very public enforcement process, ensure that Bell Atlantic–NY management will remain committed to Checklist compliance even after §271 approval is granted.” (NY PSC Evaluation, at 3-4). In this regard, DSL.net agrees with the DOJ that “Bell Atlantic

should be required to remove the few but important obstacles to local competition that remain in New York before it enters the long distance market.” (DOJ at 3).

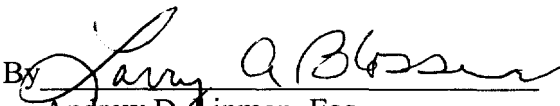
CONCLUSION

Until Bell Atlantic demonstrates that it has fully satisfied each of the checklist requirements and that grant of its application is in the public interest, the Commission should not grant Bell Atlantic’s application for long distance authority.

Respectfully submitted,

DSL.net, Inc.

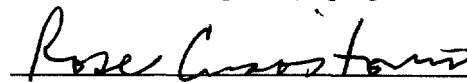
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Comments of DSL.net, Inc." was served on this 8th day of November, 1999, via U.S first-class, postage prepaid mail, on each of the persons listed below.


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